WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

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ENROLLED

HOUSE BILL No. 705

(By Mr. SAVILLA and Mr. ALLEN)

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PASSED February 26, 1974

In Effect Ninety Days from Passage

FILED IN THE OFFICE
EDGAR F. WEISHELL III
SECRETARY OF STATE
THIS DATE 3-5-74
AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-c, relating to emergency medical service to meet certain minimum standards promulgated pursuant to the Federal Highway Safety Act of 1966; purposes of article; definitions; exemptions; persons to be in attendance in ambulances; standards for emergency medical service attendants; promulgation of rules; issuance, renewal, validity, suspension and revocation of certificates for emergency medical service attendants; and issuance of certain temporary certificates for emergency medical service attendants; setting forth appeal procedures and authorizing judicial reviews; creating an emergency medical service advisory council; relating to the composition, appointment, duties, meetings and payment of expenses of the council; and liability for cost of emergency medical service and providing that any patient who receives ambulance service and who is unable to give his consent to, or contract for, the service, whether he has agreed or consented to liability for the service, shall be liable in implied contract to the person providing the ambulance service for the reasonable cost thereof; setting forth violations of provisions of article, providing criminal offenses and penalty and authorizing injunctive relief; and providing limitations on private rights of action against physicians, surgeons and certified emergency service medical attendants.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-c, to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-1. Purposes of article.

The Legislature finds and declares: (1) That the safe and efficient operation of life-saving and life-preserving emergency medical service to meet the needs of citizens of this state is a matter of general public interest and concern; (2) that, in order to ensure provision of adequate emergency medical service within this state for the protection of the public health, safety and welfare, it is imperative that minimum standards for emergency medical service attendants be established and enforced by the state; (3) that emergency medical service attendants should meet minimum training standards promulgated by the state board of health; (4) that it is the public policy of this state to enact legislation to carry out these purposes and comply with minimum standards for emergency medical service attendants specified in the Federal Highway Safety Act of 1966 and standards promulgated thereunder; and (5) that any patient who receives emergency medical service and who is unable to consent thereto should be liable for the reasonable cost of such service.

§16-4C-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

“Ambulance” means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients.

“Ambulance service” means the transportation, and treatment at the site of pickup and enroute, of a patient to or from a place where medical, hospital or clinical service is normally available.

“Emergency medical service attendant” means any person who is responsible for attending, caring for and giving life-saving or life-preserving treatment to a patient transported in
an ambulance. This term includes both the driver of an ambulance and any person assigned to the ambulance to attend patients.

"Governing body" shall have the meaning ascribed to it as applied to a municipality in subsection (b), subdivision (1), section two, article one, chapter eight of this code.

"Municipality" shall have the meaning ascribed to it in subsection (a), subdivision (1), section two, article one, chapter eight of this code.

"Patient" means any sick, injured, wounded or otherwise incapacitated or helpless person, or an expectant mother who needs medical, hospital or clinical service under an existing or imminent emergency situation.

"State board" means the state board of health.

§16-4C-3. Vehicles, aircraft and persons aboard them exempted from requirements of article.

The following vehicles and aircraft are exempted from the application of the provisions of this article and rules promulgated pursuant to it and persons aboard them are not required to comply with the provisions of section four of this article:

(a) Privately owned vehicles and aircraft not ordinarily used in the business or service of transporting patients.

(b) Vehicles and aircraft used as ambulances in case of a catastrophe or emergency when the ambulances normally staffed by certified emergency medical service attendants based in the locality of the catastrophe or emergency are insufficient to render the service required.

(c) Ambulances based outside this state, except that emergency medical service attendants aboard any such ambulance receiving a patient within this state for transportation to a location within this state must comply with the provisions of this article and the rules promulgated pursuant to it.

(d) Ambulances owned by or operated under the direct control of a governmental agency of the United States.

(e) Vehicles and aircraft designed primarily for rescue operations and which do not ordinarily transport patients.
§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates; issuance of temporary certificates.

After the first day of January, one thousand nine hundred seventy-five, every ambulance, except those vehicles and aircraft exempted in section three of this article, shall have at least one physician, osteopathic physician, any state licensed health provider qualified to render first aid or mobile intensive care paramedic duly licensed to serve in such capacity under the laws of this state or one person who possesses a valid emergency medical service attendant certificate issued hereunder by the state board in its patient compartment at all times when a patient is being transported.

In accordance with the provisions of chapter twenty-nine-a of this code, the state board shall promulgate rules regarding the age, training and physical requirements of emergency medical service attendants. As a minimum training requirement, every emergency medical service attendant shall have earned and possess a valid American red cross advanced first aid certificate, or an advanced first aid certificate issued by the United States bureau of mines (now referred to as the mining enforcement and safety administration, United States department of the interior) or the equivalent thereof; or have successfully completed the course on emergency care and transportation of the sick and injured recommended by the American academy of orthopedic surgeons or the equivalent thereof, before he is issued a certificate: Provided, That any member of a rescue unit organized and engaged in providing ambulance service prior to the first day of January, one thousand nine hundred seventy-five, which is operated by a rescue squad, fire department, police department, county or municipality of this state, who on that date is certified by the respective county health officer of the county wherein such unit is based, or, if there is no county health officer, by the county court or governing body of the jurisdiction
wherein such unit is based, that he is adequately trained and is capable of performing the service required of an emergency medical service attendant, shall be issued an original emergency medical service attendant certificate by the state board upon his submitting proper application for such certificate. The state board may promulgate rules for emergency medical service attendants which exceed this minimum training requirement, but such rules must first be approved by the emergency medical service advisory council provided for in section six of this article.

Any person desiring certification as an emergency medical service attendant shall apply to the state board using forms and procedures prescribed by the state board. Upon receipt of such application, the state board shall determine if the applicant meets the requirements for certification and examine the applicant as, in its discretion, is necessary to make such determination. If it is determined that the applicant meets all of the requirements, the state board shall issue an emergency medical service attendant certificate to the applicant. Emergency medical care attendant certificates issued by the state board shall be valid for two years from the date of their issuance unless sooner suspended or revoked by the state board. Certificates may be renewed for additional two-year periods after examination of the certificate holder and determination by the state board that such holder meets the requirements established for emergency medical service attendants: Provided, That if any county health officer of any county, or, if there is no county health officer, the county court or governing body of the jurisdiction concludes that any area of that jurisdiction has not been afforded the necessary training or equipment to implement this section, then this section shall not apply.

The state board may issue a temporary emergency medical service attendant certificate to an applicant, with or without examination of the applicant, when it finds such issuance to be in the public interest. Unless sooner suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and it shall not be renewed thereafter unless it be in the public interest: Provided, That the expiration date of any such temporary certificate issued shall be extended until the holder of such certificate is afforded
at least one opportunity to take an emergency medical care
attendant training course within the general area where he
serves as an emergency medical service attendant, but the ex-
piration date shall not be extended for any longer period of time
or for any other reason.

There shall be no fee or other payment required of an ap-
plicant for original certification as an emergency medical ser-
vice attendant, renewal of such certificate or of an applicant
for temporary certification as an emergency medical service
attendant.

§16-4C-5. Suspension or revocation of certificate or temporary
certificate.

(a) The board may at any time upon its own motion and
shall upon the verified written complaint of any person conduct
an investigation to determine whether there are any grounds for
the suspension or revocation of a certificate or temporary
certificate issued under the provisions of this article.

(b) The board shall suspend or revoke any certificate or
temporary certificate when it finds the holder thereof has:
(1) Obtained a certificate or temporary certificate by
means of fraud or deceit;
(2) Been incompetent, grossly negligent, or guilty of other
malpractice as defined by the board by reasonable rules and
regulations; or
(3) Failed or refused to comply with the provisions of this
article or any reasonable rule and regulation promulgated by
the board hereunder or any order or final decision of the
board.

(c) The board shall also suspend or revoke any certificate
or temporary certificate if it finds the existence of any grounds
which would justify the denial of an application for such
license or temporary permit if application were then being
made for it.

§16-4C-6. Notice of refusal, suspension or revocation of certificate;
appeals to state board; judicial review.

An application for an original emergency medical service
attendant certificate, for the renewal of an emergency medical
service attendant certificate or for a temporary emergency
medical service attendant certificate, shall be acted upon by
the state board, and the state board's certificate delivered or
mailed, or a copy of any order of the state board denying any
such application delivered or mailed to the applicant, by the
state board within fifteen days after the date upon which
such application was received from the applicant.

Whenever the state board shall refuse to issue an emergency
medical service attendant certificate or a temporary emergency
medical service attendant certificate, or shall suspend or revoke
an emergency medical service attendant certificate, or a tem-
porary emergency medical service attendant certificate, it
shall make and enter an order to that effect, which order
shall specify the reasons for such denial, suspension or revoca-
tion, and shall cause a copy of such order to be served in
person or by certified mail, return receipt requested, on the
applicant or certificate holder, as the case may be.

Whenever a certificate is suspended or revoked, the state
board shall in the order of suspension or revocation direct
the holder thereof to return his certificate to the state board.
It shall be the duty of such certificate holder to comply with
any such order following expiration of the period provided
for an appeal to the state board.

Any applicant or certificate holder, as the case may be,
adversely affected by an order made and entered by the
state board may appeal to the state board for an order
vacating or modifying such order or for such order as the
state board should have entered. The person so appealing
shall be known as the appellant. An appeal shall be perfected
by filing a notice of appeal with the state board within
ten days after the date upon which the appellant received
the copy of such order. Said notice of appeal shall be in
such form and contain such information as may be prescribed
by the state board, but in all cases shall contain a description
of any order appealed from and the grounds for said appeal.
The filing of the notice of appeal shall operate to auto-
matical stay or suspend execution of any order which is the
subject matter of said appeal. All of the pertinent provisions
of article five, chapter twenty-nine-a of this code shall apply to
and govern the hearing on appeal and the administrative pro-
cedures in connection with and following such hearing, with
like effect as if the provisions of said article five were set
forth in extenso herein.

The state board shall set a hearing date which shall be
not less than ten days after it received the notice of appeal
unless there is a postponement or continuance. The state
board may postpone or continue any hearing on its own
motion, or for good cause shown upon the application of the
appellant. The appellant shall be given notice of said hearing
in person or by certified mail, return receipt requested.
Any such hearing shall be held in Charleston, Kanawha
county, West Virginia, unless another place is specified by
the state board.

After such hearing and consideration of all of the testi-
mony, evidence and record in the case, the state board shall
make and enter an order affirming, modifying or vacating
the order of the state board, or shall make and enter such
order as the state board should have entered. Such order
shall be accompanied by findings of fact and conclusions
of law as specified in section three, article five, chapter twenty-
nine-a of this code, and a copy of such order and accompany-
ing findings and conclusions shall be served upon the ap-
pellant, in person or by certified mail, return receipt requested.
The order of the state board shall be final unless vacated or
modified upon judicial review thereof.

Any appellant adversely affected by a final order made
and entered by the state board is entitled to judicial review
thereof. All of the pertinent provisions of section four, article
five, chapter twenty-nine-a of this code shall apply to and
govern such review with like effect as if the provisions
of said section four were set forth in extenso herein. The
judgment of the circuit court shall be final unless reversed,
vacated or modified on appeal to the supreme court of appeals
in accordance with the provisions of section one, article six,
chapter twenty-nine-a of this code.

§16-4C-7. Emergency medical service advisory council created;
duties, composition, appointment, meetings, expenses.

For the purpose of assisting the state board in developing
standards for emergency medical service attendants, there
is hereby created the emergency medical service advisory
council.

The council shall be composed of ten members appointed
by the governor. The governor shall appoint one representa-
tive each from the West Virginia association of county
officials, West Virginia council of towns and cities, West
Virginia state firemen's association, American red cross, West
Virginia hospital association, West Virginia state medical as-
association, West Virginia funeral directors association, gover-
nor's highway safety administration, one person to represent
private commercial ambulance services within the state and one
person to represent emergency rescue squads operating within
the state. The person appointed from the West Virginia funeral
directors association shall be a person who provides ambulance
service at the time of his appointment and throughout his term.

Initially, the governor shall appoint four members of the
council for terms of two years and five for terms of four years.
Thereafter, appointments shall be for terms of four years and
made in a manner to preserve the representation of the council
as it was originally comprised.

The council shall choose its own chairman and meet at the
call of the director of the state department of health but the
council shall not meet more than five times in any one year.
Council members shall not receive any compensation for their
services as council members but shall be reimbursed by the state
board for all reasonable and necessary expenses actually in-
curred by them in the discharge of their official duties.

§16-4C-8. Liability for cost of ambulance service.

Any patient who receives ambulance service and who is
unable to give his consent to, or contract for, the service,
whether or not he has agreed or consented to liability for the
service, shall be liable in implied contract to the person pro-
viding the ambulance service for the reasonable cost thereof.

§16-4C-9. Violations; criminal penalties.

Any person who operates an ambulance or who provides
an ambulance service not in compliance with the provisions of
this article or the rules promulgated by the state board pur-
suant to this article, or who operates an ambulance with un-
certified emergency medical service attendants aboard when
not lawfully permitted to do so shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not less
than one hundred dollars nor more than three hundred dol-
lars, or imprisoned in the county jail not more than one month,
or both fined and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.

Whenever it appears to the state board that any person has
been or is violating or is about to violate any provision of this
article or any final order of the state board, the state board
may apply in the name of the state, to the circuit court of the
county in which the violation or violations or any part thereof
has occurred, is occurring or is about to occur, for an injunc-
tion against such person and any other persons who have
been, are or are about to be, involved in, or in any way parti-
cipating in, any practices, acts or omissions, so in violation,
enjoining such person or persons from any such violation or
violations. Such application may be made and prosecuted to
conclusion whether or not any such violation or violations have
resulted or shall result in prosecution or conviction under the
provisions of section eight of this article.

Upon application by the state board, the circuit courts of
this state may by mandatory or prohibitory injunction compel
compliance with the provisions of this article and all final
orders of the state board.

The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application per-
mitted by the provisions of this section shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals. Any such appeal shall be sought in the manner and
within the time provided by law for appeals from circuit courts
in other civil cases.

§16-4C-11. Private rights of action.

No physician or surgeon who in good faith gives emergency
instructions to a certified emergency service medical attendant, nor any certified emergency service medical attendant who in good faith cares for or gives life saving or life preserving treatment to a patient transported in an ambulance, shall be liable for any civil damage or injury resulting from such treatment, unless such damage or injury be intentionally inflicted or the result of gross negligence.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ______ this the ________ day of ________, 1974.

Governor
PRESENTED TO THE GOVERNOR

Date 3/11/74
Time 4:20 p.m.